

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CATHERINE RUBERY, Derivatively On  
Behalf of E\*TRADE FINANCIAL  
CORPORATION,

**Plaintiff:**

vs

MITCHELL H. CAPLAN, R. JARRETT  
LILIEN, ROBERT J. SIMMONS, GEORGE  
A. HAYTER, DARYL BREWSTER,  
RONALD D. FISHER, MICHAEL K.  
PARKS, C. CATHLEEN RAFFAELI, LEWIS  
E. RANDALL, DONNA L. WEAVER and  
STEPHEN H. WILLARD,

**Defendants.**

- and -

**E\*TRADE FINANCIAL CORPORATION, a  
Delaware Corporation.**

**Nominal Defendant.**

No. 07 Civ. 8612 (LBS) ECF Case

MARILYN CLARK, Derivatively On Behalf  
of E\*TRADE FINANCIAL CORPORATION,

Plaintiff.

vs.

MITCHELL H. CAPLAN, R. JARRETT  
LILIEN, ROBERT J. SIMMONS, GEORGE  
A. HAYTER, DARYL BREWSTER,  
RONALD D. FISHER, MICHAEL K.  
PARKS, C. CATHLEEN RAFFAELI, LEWIS  
E. RANDALL, DONNA L. WEAVER and  
STEPHEN H. WILLARD,

**Defendants,**

- and -

E\*TRADE FINANCIAL CORPORATION, a  
Delaware Corporation.

**Nominal Defendant.**

No. 07 Civ. 8619 (LBS) ECF Case

ELECTRONICALLY FILED

## STIPULATION AND [PROPOSED] ORDER

WHEREAS plaintiff Catherine Rubery commenced the first action captioned above by the filing of a complaint on or about October 4, 2007 (the "Rubery Action"); and

WHEREAS plaintiff Marilyn Clark commenced the second action captioned above by the filing of a complaint on or about October 4, 2007 (the "Clark Action"); and

WHEREAS each of the Rubery and Clark Actions, respectively (collectively, the "derivative actions"), asserts, inter alia, a claim derivatively against all defendants for violation of §10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder; and

WHEREAS prior to the filing of the Rubery complaint, a related action was instituted by Larry Freudenberg, styled as a federal securities class action lawsuit and captioned *Freudenberg v. E\*Trade Financial Corporation, et al*, No. 07-cv-8538 (the "Freudenberg Action") and assigned to Judge Robert W. Sweet; and

WHEREAS two additional federal securities actions have since been filed, captioned *Boston v. E\*Trade Financial Corporation, et al*, No. 07-cv-8808 (the "Boston Action") and *Thulman v. E\*Trade Financial Corporation, et al*, No. 07-cv-9651 (the "Thulman Action"), and assigned to Judge Sweet (collectively, with the Freudenberg action, the "federal securities actions"); and

WHEREAS the two derivative actions should be consolidated for all purposes separately from the federal securities actions; and

WHEREAS because all three federal securities actions allege similar facts and include some of the same defendants as the two derivative actions, all five actions are related; and

WHEREAS the interests of justice and efficiency will best be served if the two derivative actions are transferred to the court where the first-filed federal securities action (and two related actions) are already pending; and

WHEREAS the process for the selection of lead plaintiff(s) and lead counsel in accordance with the Private Securities Litigation Reform Act of 1995 (the "PSLRA") has not yet been completed in the federal securities actions; and

WHEREAS counsel for the plaintiffs in the Freudenberg and Boston Actions have indicated that it is their intention to file a consolidated amended complaint and have stipulated to a briefing schedule with respect to said complaint and any motion to dismiss said complaint, which schedule was so-ordered on November 16, 2007; and

WHEREAS the undersigned attorneys for plaintiffs and defendants have conferred regarding issues of scheduling and transfer of the derivative actions;

IT IS HEREBY STIPULATED AND AGREED by and among the undersigned attorneys for the parties to these actions as follows:

1. Plaintiffs and defendants will take the appropriate steps to transfer these actions to the court where the first-filed federal securities action and related actions are already pending.

2. The Rubery and Clark actions are consolidated for all purposes.

3. Robbins, Umeda & Fink, LLP and the Law Offices of Thomas G. Amon shall be lead counsel for the derivative actions.

4. Plaintiffs shall have 60 days after entry of an order determining the motion to dismiss the consolidated amended complaint in the federal securities actions to serve a Consolidated Amended Complaint in the derivative cases (the "CAC").

5. Defendants shall have 60 days after service of the CAC to answer, move, or otherwise respond to the CAC.

6. Plaintiffs shall have 60 days after service of defendants' response to the CAC to serve opposition papers.

7. Defendants shall have 45 days after service of plaintiffs' opposition papers to serve reply papers.

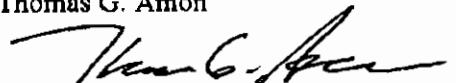
8. Nothing in this stipulation constitutes a waiver of any defenses including, without limitation, defenses based on lack of personal jurisdiction and/or insufficiency of service of process or lack of service of process, and all such defenses are expressly reserved.

9. Nothing in this stipulation shall preclude the parties from agreeing to any additional extension and requesting the transference court to so-order such extension.

10. This stipulation may be executed in counterparts and by facsimile signatures.

Dated: November 28, 2007  
New York, New York

LAW OFFICES OF THOMAS G. AMON  
Thomas G. Amon

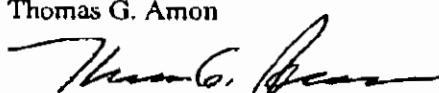
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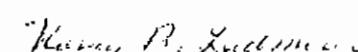
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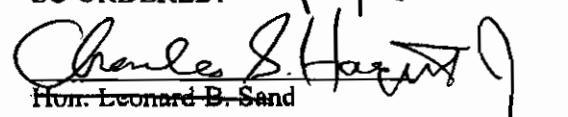
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*and Other Defendants*

SO ORDERED: 01/08/08

  
Hon. Leonard B. Sand  
(PART I)